

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Scheer )  
Serial No. 09/867,200 ) Examiner: Cuff, Michael A.  
Filed: May 29, 2001 ) Art Unit: 3627  
Title: Method For Managing ) Attny Docket: 31083.05US3  
Inventory Within An )  
Integrated Supply Chain )

REPLY BRIEF

Mail Stop Appeal Briefs - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Appellant hereby submits this Reply to the Examiner's Answer dated March 21, 2008.

The Commissioner is authorized to charge any fee deficiency or credit overpayment to deposit account number 50-2428 in the name of Greenberg Traurig.

## REMARKS

In accordance with 37 CFR §§ 41.41(a)(1) and 41.43(b), Appellant hereby submits this Reply Brief in response to the Examiner's Answer.

Having considered the Examiner's Answer, it is respectfully submitted that the Examiner's Answer continues to evidence that the rejection of the claims is not considering the claims "as a whole" as is required when considering the patentability of claims at issue. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). It is additionally respectfully submitted that, when the claims are considered "as a whole," it is evident that record fails to demonstrate, by the required preponderance of evidence, that the legal determination sought to be proved, i.e., that the reference teachings include all of the elements claimed, is more probable than not. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). (The legal standard of "a preponderance of evidence" requires the evidence to be more convincing than the evidence which is offered in opposition to it).

As discussed in the Appellant's Appeal Brief, the invention claimed sets forth, among other things, "using a critical stocking ratio for each of a plurality of items to apportion a total quantity of each of the plurality of items which can be held in inventory over a forecast period in shares to a plurality of distribution points in a supply chain." The Examiner's Answer once again acknowledges that Caveney does not disclose each and every one of these claimed elements. While the Examiner's Answer acknowledges that Caveney does not disclose each and every one of these claimed elements, the Examiner's Answer has continued to conclude that Tsukishima somehow teaches or suggests modifying Caveney to arrive at the entirety of the

invention claimed. In support of this conclusion, the Examiner's Answer cites to the Title of Tsukishima, the Abstract of Tsukishima, Col. 7, lines 41-67 of Tsukishima, and Fig. 2 of Tsukishima.

In response, it is respectfully submitted that the Title of Tsukishima, namely, "Device And Method For Calculating Required Quantity Of Material," cannot be said to disclose, teach, or suggest the claim elements that have been acknowledged to be missing from Caveney, namely, each and every element in the claimed "using a critical stocking ratio for each of a plurality of items to apportion a total quantity of each of the plurality of items which can be held in inventory over a forecast period in shares to a plurality of distribution points in a supply chain." More particularly, it is respectfully submitted that the Title of Tsukishima makes no mention of apportioning a total quantity of each of a plurality of items which can be held in inventory over a forecast period in shares to a plurality of distribution points in a supply chain. Accordingly, because the Title of Tsukishima fails to disclose, teach, or suggest the claimed elements that have been acknowledged to be missing from Caveney, it is respectfully submitted that the Title of Tsukishima cannot be said to demonstrate, by the required preponderance of evidence, that the teachings of Tsukishima suggest modifying Caveney to arrive at the exact invention claimed as has been asserted by the Examiner.

It is similarly respectfully submitted that neither the Abstract of Tsukishima, Col. 7, lines 41-67 of Tsukishima, nor Fig. 2 of Tsukishima can be said to disclose, teach, or suggest the claim elements that have been acknowledged to be missing from Caveney, namely, each and every element in the claimed "using a critical stocking ratio for each of a plurality of items to apportion a total quantity of each of the plurality of items which can be held in inventory over a forecast period in shares to a plurality of distribution points in a supply chain." Rather, as

discussed in the Appellant's Appeal Brief, the Abstract, Col. 7, lines 41-67 and Fig. 2 of Tsukishima discloses, teaches, and suggests nothing more than using a "part-based expansion" arithmetic unit *to allot inventory items between one of a plurality of processor elements to determine types of items, quantities of items, and delivery terms of items required for timely manufacture of an article.* Accordingly, because none of the Abstract, Col. 7, lines 41-67 or Fig. 2 of Tsukishima discloses, teaches, or suggests the claimed elements of "using a critical stocking ratio for each of a plurality of items to apportion a total quantity of each of the plurality of items which can be held in inventory over a forecast period in shares to a plurality of distribution points in a supply chain," it is respectfully submitted that none of the Abstract, Col. 7, lines 41-67 or Fig. 2 of Tsukishima can be said to demonstrate, by the required preponderance of evidence, that the teachings of Tsukishima suggest modifying Caveney to arrive at the exact invention claimed as has been asserted by the Examiner.

From the foregoing it is respectfully submitted that the rejection of the claims has failed to meet the burdens associated with presenting a *prima facie* case of obviousness as the rejection of the claims has failed to demonstrate, by the required preponderance of evidence, where either Caveney or Tsukishima discloses, teaches, or suggests the claimed elements of "using a critical stocking ratio for each of a plurality of items to apportion a total quantity of each of the plurality of items which can be held in inventory over a forecast period in shares to a plurality of distribution points in a supply chain." For at least this reason it is respectfully submitted that the rejection of the claims under 35 U.S.C. § 103 must be withdrawn.

It is additionally respectfully submitted, for the reasons discussed in the Appellant's Appeal brief, that the Examiner's continued reliance upon the Appellant's own disclosure or "common sense" cannot be said to demonstrate, by the required preponderance of evidence,

where either Caveney or Tsukishima discloses, teaches, or suggests the claimed elements of “using a critical stocking ratio for each of a plurality of items to apportion a total quantity of each of the plurality of items which can be held in inventory over a forecast period in shares to a plurality of distribution points in a supply chain” and, as such, simply cannot be used to support the Examiner’s conclusion of obviousness under 35 U.S.C. § 103.

At this time, it is further respectfully submitted that the Examiner’s Answer continues to evidence that the Examiner is also ignoring the claimed elements of “determining a replenishment method for each of the plurality of items at each of the plurality of distribution points in the supply chain” or the claimed elements of “executing the replenishment method to create orders for items at any of the plurality of distribution points in the supply chain that fail to have a base stock level for any of the plurality of items thereby causing inventory within the supply chain to be managed in accordance with the critical stocking ratio.” In this regard, it is respectfully noted that the rejection of the claims set forth in the Examiner’s Answer **never** asserts where these claimed elements can be found in either Caveney or Tsukishima. Rather, in the “claim map” provided in the Examiner’s Answer the Examiner has asserted that these claimed elements are referenced in “the above” discussion pertaining to the steps preceding these claimed elements - which they are not. Nevertheless, it is respectfully submitted that the cited to passages from Caveney and Tsukishima, which not only fail to disclose, teach, or suggest the elements of the preceding claims steps as discussed above and in the Appellant’s Appeal Brief, also fail to disclose, teach, or suggest all of the claimed elements noted herein. Accordingly, because the conclusory statement that is set forth within the Examiner’s Answer simply cannot be said to demonstrate, by the required preponderance of evidence, where either Caveney or Tsukishima discloses, teaches, or suggests these claimed elements, it is respectfully submitted

that, for these further reasons, the rejection of the claims under 35 U.S.C. § 103 must be withdrawn.

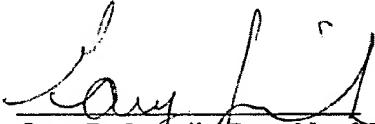
Conclusion

For each of the reasons set forth above, it is again respectfully submitted that the application is in good and proper form for allowance. Such action on the part of the Board is respectfully requested.

Respectfully Submitted;

Date: April 15, 2008

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